



April 5, 2000

Mr. Harry P. Wright
City Attorney
City of Port Neches
P.O. Box 758
Port Neches, Texas 77651

OR2000-1298

Dear Mr. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Texas Government Code (the "Act"). Your request was assigned ID# 133739.

The City of Port Neches ("the city") received a request for records regarding the investigation of four police department employees. The city claims that the requested information is excepted from disclosure under sections 552.102 and 552.111 of the Government Code. We have considered the exceptions the city claims and have reviewed the submitted information.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code §552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the Act. Common law privacy excepts from disclosure private facts about an individual. Therefore, information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

The information you seek to withhold relates to the work behavior and job performance of the city's police officers, and as such cannot be deemed outside the realm of public interest. *See* Open Records Decision Nos. 484 (1987) (public's interest in knowing how police departments resolve complaints against police officer ordinarily outweighs officer's privacy interest), 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 329 (1982) (reasons for employee's resignation are not ordinarily excepted by constitutional or common law privacy). Therefore, based on our review of the information, we conclude that the submitted documents are not protected from disclosure under sections 552.101 or 552.102 in conjunction with the common law right to privacy.

However, the documents contain information that is excepted from disclosure under section 552.117(2) of the Government Code. Section 552.117(2) excepts from required public disclosure the home address, telephone number, social security number, or personal family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. We have reviewed the documents and marked the information you must withhold under 552.117(2).

Next, you assert that section 552.111 excepts the polygraph examiner's reports from public disclosure as interagency memoranda. We note, however, that the release of polygraph information is governed by statute. Section 552.101 also excepts from disclosure information made confidential by other statutes. Section 1703.306 of the Occupations Code provides:

- (a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:
 - (1) the examinee or any other person specifically designated in writing by the examinee;
 - (2) the person that requested the examination;
 - (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or control a polygraph examiner's activities;

- (4) another polygraph examiner in private consultation;
or
 - (5) any other person required by due process of law.
- (b) The board or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

Texas Occupations Code § 1703.306 (formerly V.T.C.S. art. 4413(29cc) § 19A). After careful review, we have marked the information that must be withheld under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

In conclusion, we have reviewed the documents submitted and marked the information you must withhold under sections 552.101 and 552.117(2). The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

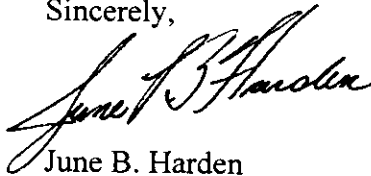
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden", is written over the typed name.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/CHS/ljp

Ref: ID# 133739

Encl. Marked documents

cc: Mr. Shane Graber
Staff Writer
Beaumont Enterprise
P.O. Box 3071
Beaumont, Texas 77704
(w/o enclosures)